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OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

RALD C. MANN
ATTORNEY GENERAL

February 24, 1939

Mr. William W. Allen
County Attorney
Lavaca County
Hallettsville, Texas

Dear Mr. Allen:

Opinion No. Q-373

Re: Does Constitution Prohibit
Deputy Sheriff from Serving
and being paid as Bailiff
to the Grand Jury?

This is in reply to your letter of February 17, 1939, in which you request an opinion as to whether or not it is lawful for a Deputy Sheriff to serve and accept pay for serving as a bailiff to the grand jury.

In our opinion your request involves a construction to clauses of the Constitution of Texas which provides as follows:

Section 33, Article 16, provides in part as follows:

"The accounting officers of this State shall neither draw nor pay a warrant upon the treasury in favor of any person, for salary or compensation as agent, officer or appointee, who holds at the same time any other office or position of honor, trust or profit, under this State or the United States, except as prescribed in this Constitution."

Section 40, Article 16, provides in part as follows:

"No person shall hold or exercise, at the same time, more than one civil office of emolument, except that of justice of peace,

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county commissioner, notary public and postmaster, officer of the National Guard, the National Guard Reserve, and the Officers Reserve Corps of the United States, and enlisted men of the National Guard, the National Guard Reserve, and the organized Reserves of the United States, unless otherwise specially provided herein."

It is well settled that a deputy sheriff is an officer of the State. State v. Brooks, 42 Tex. 62; Townes v. Harris, 13 Tex. 507; Miller v. Alexander, 13 Tex. 497; Murray v. State, 67 S. W. (2) 274.

In our opinion a grand jury bailiff is also an officer of the State, his appointment being provided for by statute, his tenure of office being limited as to time, and an oath of office being required from him. Article 367, 367a, 367b and 368, Code of Criminal Procedure, Vernon's Annotated Criminal Statutes of Texas; Cuilla v. State, 28 S. W. (2) 541.

In view of the authorities cited above, we are of the opinion that a deputy sheriff is prohibited by the Constitution from serving and accepting pay as a grand jury bailiff while such deputy sheriff retains his office as deputy sheriff.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By



Robert E. Kepke
Assistant

REK:LM

APPROVED:



ATTORNEY GENERAL OF TEXAS

